

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC. AND
LEIDOS, INC.,**

Plaintiffs,

V.

APPLE INC.

Defendant.

APPLE'S UNOPPOSED MOTION TO MODIFY THE AGREED PROTECTIVE ORDER

Apple submits this Motion to Amend the Agreed Protective Order (Dkt. 55). VirnetX does not oppose the motion.

In *MPH Technologies Oy v. Apple Inc.*, No. 3-18-cv-05935 (N.D. Cal.), the plaintiff MPH Technologies Oy (“MPH”) moved to compel the production of documents produced as part of this litigation, including license agreements, deposition transcripts, expert reports, trial exhibits, and responses to discovery requests, that both VirnetX and Apple produced. Ex. 1 at 3. Apple opposed the motion but the Court has not yet ruled on MPH’s motion. *Id.* at 4–5.

Section 19(a) of the Agreed Protective Order currently requires Apple to return or destroy all Discovery Materials,¹ including the materials sought by MPH, by May 29, 2024. Dkt. 55 at

¹ Defined under the Agreed Protective Order as “all items or information, including from any non-party, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony adduced at deposition upon oral examination or upon written questions, answers to interrogatories, documents and things produced, information obtained from inspection of premises or things, and answers to requests for admission, or information disclosed pursuant to subpoena under Fed. R. Civ. P. 45) that are produced, disclosed, or

§19(a). Apple seeks to modify this section of the Agreed Protective Order so that its outside counsel may retain copies of all Discovery Materials until July 31, 2024, or until the Court in *MPH Technologies Oy v. Apple Inc.* rules on MPH's motion to compel, whichever is later. Good cause exists for this limited modification so that Apple may continue to comply with the terms of the Protective Order and any obligations it may have regarding the pending motion in *MPH Technologies Oy v. Apple Inc.* All retained materials shall continue to be subject to the protections of the Agreed Protective Order in accordance with the applicable designation(s).

DATED: May 28, 2024

Respectfully submitted,

By: /s/ Leslie M. Schmidt
Gregory S. Arovas
greg.arovas@kirkland.com
Robert A. Appleby
robert.appleby@kirkland.com
Joseph A. Loy
joseph.loy@kirkland.com
Leslie M. Schmidt
Leslie.schmidt@kirkland.com
Nathaniel L. DeLucia
nathaniel.delucia@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Jeanne M. Heffernan
jeanne.heffernan@kirkland.com
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9100
Facsimile: (512) 678-9101

Akshay S. Deoras
akshay.deoras@kirkland.com

generated in connection with discovery or Rule 26(a) disclosures in this case.” Dkt. 55 at § 1(a).

KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael E. Jones, ***Lead Attorney***
Texas Bar No. 10929400
mikejones@potterminton.com
POTTER MINTON
A Professional Corporation
102 N. College Avenue, Suite 900
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 593-0846

ATTORNEYS FOR APPLE INC.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Apple complied with the meet and confer requirement in Local Rule CV-7(h). This motion is unopposed.

/s/ Leslie M. Schmidt _____

Leslie M. Schmidt

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in the compliance with Local Rule CV-5(a) on May 28, 2024. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Leslie M. Schmidt _____

Leslie M. Schmidt